



THE UNIVERSITY *of* EDINBURGH

## Edinburgh Research Explorer

### Anver M Emon, Islamic Natural Law Theories

**Citation for published version:**

Neff, S 2013, 'Anver M Emon, *Islamic Natural Law Theories*', *Edinburgh Law Review*, vol. 17, no. 3, pp. 442-44. <https://doi.org/10.3366/elr.2013.0180>

**Digital Object Identifier (DOI):**

[10.3366/elr.2013.0180](https://doi.org/10.3366/elr.2013.0180)

**Link:**

[Link to publication record in Edinburgh Research Explorer](#)

**Document Version:**

Publisher's PDF, also known as Version of record

**Published In:**

Edinburgh Law Review

**Publisher Rights Statement:**

© Neff, S. (2013). Anver M Emon, Islamic Natural Law Theories. *Edinburgh Law Review*, 17(3), 442-44. [10.3366/elr.2013.0180](https://doi.org/10.3366/elr.2013.0180)

**General rights**

Copyright for the publications made accessible via the Edinburgh Research Explorer is retained by the author(s) and / or other copyright owners and it is a condition of accessing these publications that users recognise and abide by the legal requirements associated with these rights.

**Take down policy**

The University of Edinburgh has made every reasonable effort to ensure that Edinburgh Research Explorer content complies with UK legislation. If you believe that the public display of this file breaches copyright please contact [openaccess@ed.ac.uk](mailto:openaccess@ed.ac.uk) providing details, and we will remove access to the work immediately and investigate your claim.



mediaeval England; Kirsi Salonen analyses the distribution of marital cases in two years of activity by the consistorial court of Freising in the fifteenth century; and Mia Korpiola teases out surprisingly detailed information from the episcopal registers of the Linköping bishop Hans Brask (1522 to 1527). Anu Lahtinen demonstrates that there is a rich seam of intimate and detailed evidence to be recovered in personal correspondence from the sixteenth century in Scandinavia, and Cecilia Cristellon and Silvana Seidel Menchi analyse the evidence of several Italian courts in the fifteenth and sixteenth centuries. In a final chapter Charles Donahue provides important methodological considerations concerning the kinds of evidence that can be brought to bear in the study of marriage and brings his immense knowledge of European law and the practice of European courts to a discussion of the preceding twelve chapters of the book.

The quality of the contributions to this volume is uniformly high and every contribution contains new and sometimes startling information. As usual, Brill have produced a high-quality volume which is excellently copyedited and printed. Given the general interest of the subjects covered it is a pity that the volume is so expensive. It could have provided much teaching material had it been available at a lower price.

*Frederik Pedersen  
University of Aberdeen*

EdinLR Vol 17 pp 442-444

DOI: 10.3366/elr.2013.0180

### **Anver M Emon, ISLAMIC NATURAL LAW THEORIES**

Oxford: Oxford University Press ([www.oup.com](http://www.oup.com)), 2010. x + 222 pp. ISBN 9780199579006. £55.

It is commonly said that a striking difference between the Western and Islamic philosophical and jurisprudential traditions is the absence of natural-law thought in the Islamic world. This book contests that traditional view – and supports its case with detailed expositions of the key Muslim writings in the natural-law tradition. After this book, pronouncements on the subject will never be the same again.

The author's definition of natural law may be stated simply. It is the thesis that the study of the natural world can yield important truths in the realm of morals and values, outside of any explicit religious framework. Divinity is not altogether absent from this picture, for it is conceded that, as the original creator of the world, God must be in some sense ultimately responsible for nature and its laws. But the generic natural-law thesis holds that God created the world in such a way as to make it possible for humans to apply their powers of reason to the study of that world and directly to discover important moral, ethical and even religious truths from it.

This basic natural-law belief contrasts with voluntaristic philosophies and theologies, which stress the free, arbitrary will of God as the source of all values – with that will being discoverable exclusively through revelation rather than through study of the natural world. This is the predominant philosophy – or at least theology – of the Islamic world, in the form of the 'Asharite theology, which is strongly voluntaristic and providentialist, ascribing each and every occurrence, however minute, to the conscious will of God. The natural-law outlook also contrasts with the secular philosophies of the positivist stripe, which maintain that there is no connection between the physical world and the realm of human values.

The author of this book not only insists, in great detail, on the existence of natural-law thought in the Muslim world. He goes on to characterise it as coming in two principal versions, which he calls "hard" and "soft" natural law. These two approaches were in agreement as to the

existence of a close bond between the physical and moral worlds. But they differed as to the nature and origin of that link. The hard natural lawyers held, broadly, that the affinity between the two realms is an inherent and inevitable feature of our universe. God could not have created the universe in any other fashion because a world in which nature and morals were *not* linked would be an imperfect one – and it is not in God's nature to create an imperfect world. The soft natural lawyers, in contrast, maintained that the physical-moral linkage was *not* inevitable, that it was a free gift by God who was entirely at liberty to create the world in any other manner if he so chose. The hard natural lawyers, they contended, were in error in imposing their standards of rationality onto God. The author's account of the contentions between these two schools of thought – plus that of the voluntarists who opposed both of them – is a masterfully clear, as well as thorough and detailed.

Three jurists are placed in the category of hard natural law, none of whom features in any detail in standard Western treatments of Islamic law and philosophy. These are Abū Bakr al-Jassās (tenth century), 'Abd al-Jabbār (late tenth and early eleventh centuries) and Abū al-Husayn al-Basrī (also late tenth and early eleventh centuries). A careful exposition of the writings of each of these three is provided. It is noted that these writers, 'Abd al-Jabbār most of all, had connections with the theological school known as the Mu'tazilites, who were broadly of a rationalistic outlook. The views lost out in the course of the Middle Ages to the dominant 'Asharite theologians. The author is careful, however, to caution against making too ready or facile an association between Mu'tazilite theology and hard natural law.

The principal adherents of soft natural law are decidedly better known, at least to Western audiences. Chief among them was the renowned philosopher and theologian – and jurist – Abū Hāmid al-Ghazālī, of the late tenth and early eleventh centuries, who had a powerful impact on Western scholastic theology under the Latin cognomen of "Al Gazel." Another eminent proponent of soft natural law was Fakhr al-Dīn al-Rāzī, also a noted philosopher, theologian and lawyer (though not to be confused with his more famous namesake, who was a physician, alchemist and philosopher of the ninth and tenth centuries). An important feature of soft natural law thought was its reliance on *maslaha*, which refers basically to the purpose or goal which the law is to serve. The concept has had an important influence in recent centuries, at the hands of reformers who have deployed it to update the Islamic Shar'ia, or sacred law, to make it more relevant to modern challenges.

No attempt is made at a comparative study of natural law, i.e., to determine how the Muslim natural lawyers, hard or soft, resembled or differed from their Western European counterparts. On this point, it will perhaps suffice to say, for present purposes, that the Muslim natural lawyers always saw their central purpose as being to determine the content of God's will in situations in which scriptural authority was lacking. In this sense, there was a strong current of voluntarism even in the natural lawyers (both hard and soft). Western natural lawyers, in contrast, such as Thomas Aquinas, were more prepared to concede a wholly autonomous role to natural law – and even to state explicitly that God himself was powerless to alter it. The views of Aquinas and his followers were therefore "harder" than those of even the hard Muslim natural lawyers. (The soft natural lawyers strongly denied that God could be under any such constraints.)

The book is a marvelously lucid, as well as highly learned, exposition of lines of thought that are very little known, as yet, to Western scholars. From the standpoint of lay readers, the book would have benefited from a comprehensive glossary or index of Arabic terms, many of which are technical terms of jurisprudence or theology. These figure strongly in the exposition, and it is not always easy for the reader to locate the first use, as a reminder to what is being discussed. There are, however, indexes of concepts and of names, both of which are useful.

In sum, this is an excellently written book which sheds a world of fresh light onto Islamic philosophy and jurisprudence. Every future consideration of natural law in the Islamic world will have to take full account of this masterful work, and all future students of this subject will be deeply in Professor Emon's debt.

*Stephen C Neff*  
*University of Edinburgh*

EdinLR Vol 17 pp 444-445  
DOI: 10.3366/elr.2013.0181

**COURT OF JUSTICE OF THE EU. COMMENTARY ON STATUTE AND RULES OF PROCEDURE. Ed B Wägenbaur**

Oxford: Hart ([www.hartpub.co.uk](http://www.hartpub.co.uk)), 2013. lxxiv + 921 pp. ISBN 9781841139951. £165.

In this review, I explain the purpose and describe the content of this book. I then go on to present a few critical observations.

The primary remit of this book is to provide an exposition of the rules of law that govern the legal processes before the Court of Justice of the European Union (hereinafter the CJEU). This exposition, moreover, is not intended to be simply a consolidated compendium of these rules, but to alert the reader to interesting and important matters associated with their formation. Indeed, at the outset, adverting to the well-recognised instrumental role the EU (more generally) has played in securing peace and stability in late 20<sup>th</sup> century Europe (and beyond), Wägenbaur provocatively states that “[t]he Court of Justice of the European Union is thus much more than a supranational judicial instance: it serves the unity of EU law and is a major player in a vital peacekeeping mission. . . . This requires an elaborate judicial system with a variety of legal remedies governed by specialized procedural rules” (v). The secondary remit of this book is thus to tease out the salient historical, normative, and comparative dimensions that underpin the CJEU's rules of procedure – providing commentary which serves as food for thought for those interested in the practice and theory of judicial governance in the EU.

As a preliminary observation, and the most immediately apparent, the rules of procedure of the CJEU are presented systematically and comprehensively. To those already accustomed to the study of these rules, the Statute of the Court of Justice (SCJ) and the Rules of Procedure of the Court of Justice of the European Union (RPCJ) are familiar doctrinal terrain, which are central to the analyses presented here. Yet as Wägenbaur correctly notes, the rules of procedure which govern the legal processes before the CJEU are derived from an expansive array of formal and informal sources – what he refers to as the “three regulatory levels” (1-9). “Primary Law” includes: the EU's Treaties; the SCJ (Protocol No.3 of the Treaty on the Functioning of the European Union (hereinafter TFEU)); and general principles of law, including fundamental rights and general principles of law found in the CJEU's jurisprudence, the legal systems of the Member States of the EU, and international law. “Secondary Law” relates exclusively to the rules of procedure adopted by the Council of Ministers and the CJEU through the special legislative procedure provided for in Article 253 (6) TFEU, Article 254 (5) TFEU, Articles 63 and 64 SCJ, and Article 7 Annex I SCJ. The third and remaining sources of law relate to the informal codes of practice issued by the CJEU informally, and the case law of the CJEU. The doctrinal exposition of the CJEU's rules of procedure is thus not merely limited to the familiar sources of procedural law, but any rule of law that in some way and to some degree influences the legal processes before the CJEU. The systematic and comprehensive nature of this exposition is further exemplified by considering the rules of procedure relevant to all three “judicial instances” of the CJEU, which are: the European Court of Justice (ECJ);